

DAVID DANIEL FOSTER, et al.,

Plaintiffs,

vs.

DEPARTMENT OF THE NAVY,

Defendant.

that venue is improper, it must either dismiss the action or, “if it be in the interest of justice, transfer [it] to any district or division in which it could have been brought. 28 U.S.C. § 1406(a). Pursuant to the statutory provisions for change of venue in civil actions generally, district courts may, “[f]or the convenience of the parties and witnesses, in the interest of justice,” a court may transfer a civil action to any district where the action “might have originally been brought.” 28 U.S.C. § 1404(a); see Datasouth Computer Corp. v. Three Dimensional Techs., Inc., 719 F. Supp. 446, 450-51 (W.D.N.C. 1989) (listing factors that courts commonly consider in determining whether transfer is appropriate). When venue is not proper, a court may dismiss the action under Fed. R. Civ. P. 12(b)(3). “In the absence of a waiver,” a district court does not err “by raising the issue of defective venue on its own motion.” Costlow v. Weeks, 790 F.2d 1486, 1488 (9th Cir. 1986).

Plaintiffs reside in West Virginia and the alleged negligence occurred at Camp Lejeune which is in the Eastern District of North Carolina. Because Plaintiffs do not reside in the Western District of North Carolina and the alleged negligence did not occur here, venue does not lie in this District. The Court will, in the interest of justice, transfer this action to the Eastern District of North Carolina where the alleged negligence in this case occurred. See Lopez v. U.S. Government, 68 F.Supp.2d 688 (M.D.N.C. 1999); Patel v. Phillips, 933 F.Supp.2d 153 (D.D.C. 2013) (transferring pro se plaintiff’s FTCA claim sua sponte to the district where his medical records and other records were presumably located).

III. CONCLUSION

For the reasons stated herein, this action will be transferred to the Eastern District of North Carolina.

IT IS THEREFORE ORDERED that the Clerk of this Court is hereby ordered to transfer this action to the Eastern District of North Carolina.

Signed: September 27, 2019

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
United States District Judge

